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MANDATE NOT YET ISSUED
DIS. CT. # 98-00023

No. 05-6750

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

JAN 22 2007

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DAVID CROSS,

Defendant-Appellant.

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LEONARD GREEN, Clerk

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
TENNESSEE

ORDER

Before: MERRITT, DAUGHTREY, and GRIFFIN, Circuit Judges.

David Cross appeals a district court judgment that revoked his supervised release. His case has been referred to a panel of this court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon review, the panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In 1999, Cross pleaded guilty to conspiring to distribute cocaine. *See* 21 U.S.C. § 846. He was initially sentenced to forty months of imprisonment and four years of supervised release.

The district court revoked Cross's supervised release in 2005, because he had a positive test for cocaine and had refused to comply with his probation officer's instructions. On November 1, 2005, the court sentenced Cross to seven days of imprisonment and three years of supervised release. It is from this judgment that he now appeals.

Cross's attorney has filed a motion to withdraw and a brief indicating that there are no colorable issues to appeal. *See Anders v. California*, 386 U.S. 738, 744 (1967). Cross did not file

a timely response to counsel's motion, and an independent review of the proceedings reveals no issue that would support a viable direct appeal. *See id.*

The district court held a final revocation hearing within a reasonable time, at which Cross was represented by counsel and allowed to present evidence on his own behalf. *See Fed. R. Crim. P. 32.1.* There was sufficient evidence to support the court's finding that Cross had violated a condition of his supervised release by submitting a positive urine test which indicated that he had used cocaine and by failing to comply with his probation officer's directions during another drug test. Hence, the district court did not abuse its discretion by revoking his supervised release. *See 18 U.S.C. § 3583(g)(1); United States v. Lowenstein*, 108 F.3d 80, 86 (6th Cir. 1997).

Cross had argued for a sentence other than imprisonment so that he could continue to work and be involved with his family. Defense counsel suggests that Cross may wish to argue that his new sentence was excessive, as he had completed most of his prior term of supervised release when it was imposed. The district court took these issues into account when it sentenced Cross to only seven days of imprisonment, with credit for seven days that he had already served, and to thirty-six months of supervised release, with six months of that term to be served in a community corrections center where he would have the opportunity to continue his employment. The court also gave him the benefit of the doubt regarding a separate drug screen that had produced mixed results. Cross had violated his supervised release on prior occasions and his new sentence was reasonably calculated to promote respect for the law and to provide him with needed treatment for drug abuse. *See 18 U.S.C. § 3553(a).* The sentence that Cross received was not unreasonable. *See United States v. Kirby*, 418 F.3d 621, 628 (6th Cir. 2005); *United States v. Jackson*, 70 F.3d 874, 878 (6th Cir. 1995).

Accordingly, counsel's motion to withdraw is granted and the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT



Clerk

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

LEONARD GREEN
CLERK

MARY PATTERSON
(513) 564-7033
(FAX) 564-7094
www.ca6.uscourts.gov

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Nancy Stallard Harr
U.S. Attorney's Office
220 W. Depot Street
Suite 423
Greenville, TN 37743

Tim S. Moore
Federal Defender Services
of Eastern Tennessee
129 W. Depot Street
Suite 1
Greeneville, TN 37743

David Cross
2028 Bristol Highway
Watauga, TN 37694

RE: 05-6750
USA vs. Cross
District Court No. 98-00023

Enclosed is a copy of an order which was entered today in the
above-styled case.

Very truly yours,
Leonard Green, Clerk

Mary Patterson
Mary Patterson
Case Manager

Enclosure

cc:

Honorable J. Ronnie Greer
Ms. Patricia L. McNutt